

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

**DAVID L. WILLIAMS,
Plaintiff,**

v.

Case No. 06C0597

**DR. GABNER and
MEDICAL FEDERATION,
Defendants.**

ORDER

On May 19, 2006, plaintiff, seeking relief under 42 U.S.C. § 1983, was ordered to pay an initial partial filing fee of \$4.20 to the clerk of court within twenty-one days of the court's order, pursuant to the provisions of the Prison Litigation Reform Act (PLRA). See 28 U.S.C. § 1915(b)(1). On September 5, 2006, I dismissed plaintiff's case for failure to prosecute, as he had not yet paid the initial partial filing fee. On September 11, 2006, plaintiff filed a motion for reconsideration, stating that prison officials would not release the funds from his account. Finding that plaintiff had established excusable neglect, on September 27, 2006, I granted plaintiff's motion for reconsideration and reopened his case, granting him until October 16, 2006, to pay the initial partial filing fee. I informed plaintiff that if he could not pay this fee by October 16, that he could request to proceed without payment of the initial partial filing fee. By letter of October 11, 2006, plaintiff indicated that he continues to be unable to pay the initial fee. To date, plaintiff has not filed such fee.

Prisoner requests to proceed in forma pauperis are governed by 28 U.S.C. § 1915. Pursuant to that section, prisoners are assessed an initial partial filing fee based on a calculation using the average balance of the prisoner's trust account. Id. § 1915 (b)(1)(A-

B). However, the section also provides that “[i]n no event shall a prisoner be prohibited from bringing a civil action or appealing a civil or criminal judgment for the reason that the prisoner has no assets and no means by which to pay the initial partial filing fee.” Id. § 1915(b)(4).

Given this provision, I conclude that plaintiff’s case and his pending motion may proceed notwithstanding the lack of the initial partial filing fee. Plaintiff is still required to pay the full filing fee in increments, according to the formula set forth in § 1915(b); however, I will not allow his lack of funds to delay his case any longer.

NOW, THEREFORE, IT IS HEREBY ORDERED that plaintiff Williams is permitted to proceed without payment of his initial partial filing fee.

Dated at Milwaukee, Wisconsin, this 23 day of October, 2006.

/s_____
LYNN ADELMAN
District Judge